THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.29485 of 1997

Dated 03-04-2007

Between:
The Depot Manager, APSRTC Bus Depot, Nuziveedu, Krishna District.
..... PETITIONER

AND

A.Sambasiva Rao, Office boy, APSRTC, Vijayawada-I Depot, Vijayawada, Krishna District & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.29485 of 1997

O R D E R:

Aggrieved by the order of the Labour Court, Guntur in M.P.No.16 of 1990 dated 06-11-1995, the present writ petition is filed by the Depot Manager, Nuziveed Bus Depot.

Facts, in brief, are that the first respondent, hitherto a Conductor in the APSRTC, was removed from service for certain cash and ticket irregularities. Aggrieved thereby, he approached the Labour Court, Guntur. The Labour Court held that the first respondent's failure to issue tickets was a serious irregularity, that he had failed to follow the rule of 'issue and start' and his failure to issue tickets was with an intention to appropriate the amount. While taking note of the fact that the amount involved was very small and that the misconduct committed by the first respondent was serious in nature, the Labour Court noted that this was not for the first time that he had committed cash and ticket irregularities, that he was habituated to do so even prior to the occurrence of the present incident, that it was very difficult to mend his behaviour and that it was also difficult for the Management to continue him as he had not rectified his ways though he was removed previously. However, on humanitarian grounds, the Labour Court held that the first respondent could be reverted as an office boy instead of reinstating him in the same post because the punishment of removal was a serious punishment when compared to the offence committed by him. The Labour Court held that it was just and proper to revert the first respondent as an office boy so that he could maintain his family by eking out his livelihood. The Labour Court further held that the first respondent was not entitled for reinstatement as a Conductor as he was habituated to commit cash and ticket irregularities. While holding that the removal of the first respondent was not justified, the Labour Court held that he could be reverted as an office boy instead of reinstating him as a Conductor.

It is necessary to note that the award of the Labour Court, in I.D.No.46 of 1982 dated 04-08-1984, has attained finality since

W.P.No.3741 of 1985 filed by the petitioner herein was dismissed by this Court and the first respondent did not choose to challenge the said award. The first respondent herein filed a petition, under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short 'the Act') before the Labour Court, Guntur, in M.P.No.16 of 1990, contending that under the award of the Labour Court since he was reverted as an office boy he was entitled for the pay which an office boy was entitled to along with increments from the date of his removal from service till the date of his reinstatement. The first respondent also sought for increments from the date of his reinstatement as an office boy and, in all, claimed an amount of Rs.28,961/-. The Labour Court noted that the first respondent was appointed in the year 1966, was removed from service by the Management for cash and ticket irregularities on

22-12-1973, that he had preferred I.D.No.46 of 1982 and an award was passed reverting him to the post of office boy. Aggrieved by the award of the Labour Court, Guntur, the petitioner filed W.P.No.3741 of 1985, which was also dismissed. Pursuant thereto, the first respondent was taken into service as an office boy on 29-03-1985.

In his petition, the first respondent claimed an amount of Rs.28,961/- stating that when he demanded fixation of pay taking into account his previous service, the Management had issued proceedings fixing his pay at Rs.356/-. Before the Labour Court, RW.1, the Senior Head Clerk, Vijayawada-I Depot, who appeared on behalf of the petitioner herein, stated that as per the award in I.D.No.46 of 1982, the first respondent was reverted to the post of office boy and was not appointed as an office boy afresh. He further stated that, if notional increments were added from 01-04-1985 and the corresponding dearness allowance of Rs.272/- and house rent allowance of Rs.15/- were included, his pay would be fixed at Rs.356/-. He also stated that if notional increments were added, the scale of pay would be enhanced and his pay would be fixed at Rs.615/-, in which event, the first respondent would be entitled for difference of salary, which would come to Rs.28,961/-. R.W.1 categorically stated that the first respondent was entitled to a sum of Rs.28,961/- which was claimed by him in his

petition. In re-examination R.W.1 stated that, if notional increments were added from 1973 as an office boy, his basic pay as an office boy would be Rs.615/-. Placing reliance on the evidence of R.W.1, the Labour Court held that the first respondent was entitled for a sum of Rs.28,961/-.

Sri R.Manmadha Reddy, learned standing counsel appearing on behalf of the petitioner-Corporation, would submit that since an application under Section 33-C(2) of the Act is in the nature of execution proceedings, it was not open for the Labour Court to travel beyond the award which had attained finality and, since the Labour Court had only directed the first respondent be reinstated into service as an office boy and as there was no specific direction to pay back wages, the order of the Labour Court, in M.P.No.16 of 1990 dated
06-11-1995, directing payment of Rs.28,961/- towards back wages was illegal and was liable to be quashed. Learned counsel would place reliance on **J.K.Synthetics Ltd v. K.P.Agrawal**[1].

Smt K.Udayasree, learned counsel appearing on behalf of the first respondent, would contend that since the award of the Labour Court required the petitioner herein to reinstate the first respondent as an office boy, he must be deemed to be an office boy even on the date of his removal in 1973 and, if his previous service from 1973 was taken into consideration and he was awarded notional increments from the date of his removal in 1973, then he would be entitled for the amount claimed by him before the Labour Court. Learned counsel would contend that the aforesaid judgment of the Supreme Court has no application inasmuch as the first respondent has not been awarded back wages for the period prior to the date of the award and it is only the notional increments which have been required to be taken into consideration, the pay of the first respondent refixed accordingly and the amount which constitutes arrears payable to him after the award, consequent upon re-fixation of his pay, has alone been directed to be paid under the order of the Labour Court in M.P.No.16 of 1990 dated 06-11-1995.

In **K.P.Agrawal**[1], the Supreme Court observed:

"……..But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimization. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The Court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service. What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination.

In this case, the Labour Court found that a charge against the employee in respect of a serious misconduct was proved. It, however, felt that the punishment of dismissal was not warranted and therefore, imposed a lesser punishment of withholding the two annual increments. In such circumstances, award of back wages was neither automatic nor consequential. In fact, back wages was not warranted at all……."

As held by the Supreme Court in **K.P.Agrawal**[1], where the punishment was reduced by a Court on being found to be excessive, after the finding of misconduct is affirmed, and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination and in cases, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In view of the law laid down in the aforesaid judgment, the first respondent is not entitled to be paid back wages from the date of his removal from service in 1973 till the date of the award in 1995. The fact, however, remains that he was not paid such back wages and all that the Labour Court had done, while directing that the first respondent be paid a sum of Rs.28,961/-, was that it had directed proper fixation of his pay taking into account the notional increments which he would have been entitled to from the date of his removal in 1973 and, on his pay being re-fixed accordingly, had directed payment of arrears to be paid to him from the date of his reinstatement on 29-03-1985 and not prior thereto. It must not be lost sight of that the Labour Court, in its award in I.D.No.46 of 1992 dated 04-08-1984, had directed reversion of the first respondent as an office boy and not that he be appointed as an office boy afresh. The consequence of the award of the Labour Court is that the first respondent would be held to have been an office boy even on the date of his removal from service in 1973 and to have his pay appropriately fixed by including the notional increments from 1973 till the date of his actual reinstatement on

29-03-1985. However, in view of the law laid down in **K.P.Agrawal**[1], he would not be entitled to back wages prior to 29-03-1985. It is also necessary to note that the order of the Labour Court, in M.P.No.16 of 1990 dated 06-11-1995, is based on the evidence of R.W.1, the Senior Head Clerk at Vijayawada-I depot of the petitioner-undertaking. The order of the Labour Court, in M.P.No.16 of 1990 dated 06-11-1995, does not

necessitate interference in proceedings under Article 226 of the Constitution of India. It cannot be said that the Labour Court had exceeded its jurisdiction in passing such an order as the amount directed to be paid was as a consequence of the award of the Labour Court in I.D.No.46 of 1992 dated 04-08-1984.

The Writ Petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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03-04-2007

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[1] 2007(2) SCC 433